

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ "एक-सदस्य मामला", मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL BENCH "SMC" MUMBAI

BEFORE SHRI B.R.BASKARAN, ACCOUNTANT MEMBER

सर्वश्री बी.आर.बास्करन, लेखा सदस्य के समक्ष

आयकर अपील सं./I.T.A. Nos.3071 and 3072/Mum/2015
(निर्धारण वर्ष / Assessment Years :2006-07 and 2007-08)

Rupen Patel, 5-D A K Patel Bunglow, Linking Road, Dadbhoy Road, Santacruz (W), Mumbai-400054	बनाम/ Vs.	Dy. Commissioner of Income Tax, CC-25, Aayakar Bhavan, M K Road, Mumbai-400020
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AACPP8986C

अपीलार्थी ओर से / Appellant by	Shri B K Vatsaraj
प्रत्यर्थी की ओर से/Rspondent by	Shri Ajay

सुनवाई की तारीख / Date of Hearing : 14. 07.2016

घोषणा की तारीख /Date of Pronouncement : 14.07.2016

आदेश / O R D E R

PER B.R.BASKARAN, AM :

Both the assessee's appeals are directed against the order dated 25.2.2015 passed by the Id.CIT(A)-51, Mumbai and they relate to the assessment years 2006-07 and 2007-08.

2. The assessee is aggrieved by the decisions of Id.CIT(A) in confirming the penalty levied under section 271 (1)(c) of the Income Tax Act, 1961 (the Act) for both the assessment years under consideration.

3. The facts relating to the case as narrated by the Id. CIT(A) for AY 2006-07 are extracted below:

“3. The facts of the case are that there was an action under section 132 of the Income Tax Act, 1961 on 16.12.2010 in the case of M/s Patel Engineering Ltd group of cases. As a result of the search on the Patel group, notice u/s 153C of the Income Tax Act was issued on the appellant. In compliance to the said notice, the appellant filed a letter dated 11.7.2012 requesting to treat the return of income originally filed on 10.4.2012 declaring income of Rs.36,57,741/- as filed in response to the notice under s.153C dated 10.7.2012. The appellant had declared the same total income in the original return of income filed under s. 139(1) on 31.07.2006. The said return had been acted upon and it was assessed under s.143(3) on 22.12.2008 at Rs.36,57,741/-. While completing the assessment for the impugned year the AO noticed that though the assessee was the owner of two residential properties, one at Mumbai and the other at Karjat, no income had been offered under the head "Income from House Property" even though in the assessee's own case for the very same year the AO had computed income under the head "Income from House property" and which had been sustained by the CIT(A).** The facts and the circumstances being identical, the AO has treated the property at Karjat as deemed let-out property and has brought to tax a sum of Rs. 81,221/- as income from House Property which is the sum brought to tax under the said head as per the directions of the CIT(A) for the same year in the earlier round of proceedings. The AO initiated penalty proceedings under s. 271 (1)(c) of the Income Tax Act for filing inaccurate particulars leading to concealment of income.

(** In assessment order, the AO is making reference to AY 2008-09 and not to the year under consideration)

4. After having heard the assessee in the matter the AO has held that since the assessee failed to disclose the House property income in the original return, the revised return as well as the return filed in response to notice under s. 153C, there is concealment as regards House property income as regards the second residential property. The AO has therefore imposed penalty being minimum penalty in a sum of Rs. 27,340/-”

For the assessment year 2007-08 also, the AO has levied penalty on identical reasons.

4. Before Ld CIT(A), the assessee submitted that the addition has been made on estimated basis due to legal fiction and the assessee has not actually received rental income. It was further submitted that the house property was exempt under Wealth tax Act and hence the assessee was under bonafide impression that the same was not taxable under Income tax Act also. The Id. CIT(A) did not agree with the contention of the assessee and accordingly confirmed the penalty with the following observations :

"6. I have very carefully considered the facts of the case and the submissions as made by the appellant. It was during the course of search assessment that the AO noticed that the appellant had not declared income under the head "Income from House property" even though in the assessment order under s. 143(3) for the same year (sic. as stated earlier) the AO had made addition under the head Income from House Property amounting to Rs.86,286/-. Though the appellant had taken up the matter in appeal before the CIT(A), the CIT(A), as per his order dated 22.3.2012 had sustained the findings of the AO in this regard, but had given part relief by directing the AO to take the annual letting value of the property at Rs. 10,000/- per month as against 1% of the total investment in property as taken by the AO. Thus, the fact remains that the stand of the AO that deemed income has to be brought to tax under the head "Income from House Property" had been upheld by the CIT(A) and the order of the CIT(A) had become final. There was no further appeal. Later, subsequent to the search, in response to notice under s.153C when the appellant filed the return of income, the said return did not disclose any income under the head income from House Property. These being the facts, the contention raised that since the house properties were disclosed in the Balance Sheet and that the income is a notional income and therefore the penal provisions cannot be invoked is devoid of merits. So also, the order of the Income Tax Appellate Tribunal on which reliance is placed

by the appellant is clearly distinguishable on facts. Therefore, I see no reason to interfere with the finding of the AO that this is a fit case for imposition of penalty under s.271(1)(c) of the Income Tax Act for filing inaccurate particulars leading to concealment of income. The penalty imposed in a sum of Rs. 27,340/- under s. 271(1)(c) is hereby confirmed.”

5. At the time of hearing, the Id. AR submitted that omission on the part of the assessee to include notional income on the deemed to be let out property would not amount to furnishing of inaccurate particulars of income, since the availability of two house properties have been duly disclosed by the assessee in the Balance Sheet. The Id. AR further submitted that Pune Bench of the Tribunal in the case of Kamalakar Manohar Haval V/s ITO in ITA Nos.1170 to 1173/PN/2010 (AYs-2000-01 to 2004-05) dated 30.12.2011 considered and identical issue and deleted the penalty, since the assessee had disclosed the availability of the house properties in the balance sheet and the addition on account of rental income from those house properties has been made on notional basis by estimating the income. The Id.AR placed reliance on the decision of the Tribunal dated 31.1.2013 rendered by the Co-ordinate Bench of the Mumbai Tribunal in the case of Kadar Khan V/s ACIT in ITA No.494/Mum/2012 (AY-2002-03), wherein also identical view was taken.
6. On the contrary, the Ld D.R placed strong reliance on the orders passed by Ld CIT(A).

7. I have heard rival contentions and perused the record. It is an undisputed fact that the assessee has disclosed the details of availability of two house properties and both the house properties are used for self occupation. Due to the legal fiction placed in the Act, the second house is treated as "Deemed to be let out" and the rental income thereon is assessed on notional basis. I notice that identical addition has been made by the AO in AY 2008-09 and the same has also been confirmed by Ld CIT(A). It appears that the assessee did not contest the decision of the first appellate authority there after. The date of passing of order of Ld CIT(A) in AY 2008-09 is not available on record. If the order has been received after the filing of return u/s 153C of the Act, then there is strong case for the assessee for bonafide belief.

8. In any case, the Pune bench as well as Mumbai bench of Tribunal, in the above cited cases, have held that the addition made on account of legal fiction, that too on estimated basis will not lead to levying of penalty u/s 271(1)(c) of the Act, when the assessee has duly disclosed the availability of more than one house in the Balance Sheet. Accordingly, by following the above said decisions, I set aside the orders passed by Ld CIT(A) in both the years and direct the AO to delete the penalty.

9. In the result, both the appeals of the assessee are allowed.

Pronounced accordingly on 14th July, 2016.

घोषणा खुले न्यायालय में दिनांक: 14th July, 2016 को की गई ।

Sd/-
(B.R.BASKARAN)
Accountant Member

मुंबई Mumbai: 14 th July, 2016.

व.नि.स./ SRL , Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned
4. आयकर आयुक्त / CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai concerned
6. गार्ड फाईल / Guard file.

True copy

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai